

801.2
801.1(c)

Verne, B. Michael

From: [REDACTED]
Sent: Wednesday, April 24, 2013 5:14 PM
To: Verne, B. Michael
Subject: HSR Analysis: Long-term lease

Hi, Mike ~ I hope you're well and enjoying whatever Spring weather you can (we're back to rainy and cold here)...

Per my voicemail, a client ("Lessee") is planning to enter into a long-term lease of a hospital property ("Leased Assets"). Lessee's intention is to enter in to a lease (and not a transfer of ownership) but I just wanted to make sure that the facts surrounding the agreement don't render the lease an asset acquisition for HSR purposes. Following are what I understand to be the relevant facts for this analysis:

- The duration of the lease is 25 years with two 3-year extension options (for a total possible lease term of 31 years);
- the lease rate is considered "normal" and is based on the fair market value of the Leased Assets;
- there is no nominal buyout or purchase option at the end of the lease term, although Lessee has a right of first refusal to buy the Leased Assets if Lessor were to receive a bona fide purchase offer from a third party during a 2-year period after the lease terminates;
- Lessee will provide insurance for the Leased Assets during the lease term (if the Leased Assets are completely destroyed, Lessee can terminate the lease and assign the insurance proceeds to Lessor but has no exposure beyond insurance proceeds; Lessee can also take insurance proceeds and repair or replace the Leased Assets);
- Lessee can assign the lease only to an affiliate, though it can sublease portions of the Leased Assets to tenants or developers in the course of operating the business;
- title does not pass to Lessee at the end of the lease term -- the Leased Assets are returned to Lessor;
- Lessee is committing to invest at least \$26 million over the first 5 years in capital improvements and expansion of business operations;
- the improvements would all go to Lessor but Lessor has an obligation to pay Lessee for the unamortized value of any capital improvements to the Leased Assets;
- Lessor has an obligation to purchase: (i) net working capital relating to the business on the same basis the Lessee acquired it and (ii) tangible assets at book value;
- Lessee intends to book this as a capital lease because of the long nature of the term.

If it would be helpful to discuss, I can be available anytime tomorrow whenever you have a few minutes. If you have any questions or if I should obtain any additional facts to confirm whether the lease constitutes an asset acquisition, please don't hesitate to let me know.

NOT AN ASSET ACQUISITION FOR
HSR PURPOSES. BM
4/25/13

Best
[REDACTED]
[REDACTED]
[REDACTED]

KW CONCURS

This electronic message is from a law firm. It may contain confidential or privileged information. If you received this transmission in error, please reply to the sender to advise of the error and delete this transmission and any attachments.